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## Letter dated 15 October 2004 from the Secretary-General addressed to the President of the Security Council

I should like to refer to the presidential statement dated 15 August 2004 (S/PRST/2004/30), in which the Security Council requested my Special Representative for Burundi, in close contact with my Special Representative for the Democratic Republic of the Congo, to establish the facts and to report to the Security Council on the massacre of refugees from the Democratic Republic of the Congo at Gatumba, Burundi, on 13 August 2004.

Further to the oral briefing on the preliminary findings of the investigation, which was provided by the Secretariat to the Security Council on 3 September 2004, I have the honour to transmit to you the joint report of the United Nations Operation in Burundi, the United Nations Organization Mission in the Democratic Republic of the Congo and the Office of the United Nations High Commissioner for Human Rights regarding the events that occurred at Gatumba on 13 August 2004.

I would like to take this opportunity to reiterate my grave concern about the crimes committed recently against innocent civilians in Burundi and the Democratic Republic of the Congo. As the Security Council has noted in several of its resolutions and presidential statements, impunity must be brought to an end, and perpetrators of crimes such as the one described in the attached report must be brought to justice.

I should be grateful if you would make this letter and the report available to the members of the Security Council.

(*Signed*) Kofi A. **Annan**

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**Joint report of the United Nations Organization Mission in the Democratic Republic of the Congo, the United Nations Operation in Burundi and the Office of the United Nations High Commissioner for Human Rights into the Gatumba massacre**

**5 October 2004**

# I. Introduction

1. On the night of 13 August 2004, a transit centre assisted by the Office of the United Nations High Commissioner for Refugees (UNHCR) and housing Congolese refugees and Burundian returnees at Gatumba, Bujumbura Rural Province, Burundi, was brutally attacked by a large group of armed individuals. A total of 152 Congolese refugees from the Tutsi communities of South Kivu known as the Banyamulenge were killed, 106 were wounded and 8 remain missing. The refugees appeared to be targeted because of their ethnicity.

2. On 15 August, the Security Council called on the Special Representatives of the Secretary-General for Burundi and the Democratic Republic of the Congo to conduct an immediate joint investigation of the massacre.

3. On 14 August, an investigation was initiated by human rights officers from the United Nations Operation in Burundi (ONUB) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Burundi. A first report was ready in the afternoon of 14 August. Human rights officers from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) joined on 16 August. The team was assisted by ONUB military observers.

4. In the course of its investigation, the team visited the site of the massacre at Gatumba and interviewed a cross-section of individuals, including survivors, witnesses, civilian and military authorities of Burundi and the Democratic Republic of the Congo, representatives of UNHCR and other humanitarian agencies, the diplomatic community and other relevant actors in Burundi and the eastern Democratic Republic of the Congo over the following two weeks. The preliminary report of the human rights investigation was sent to the Secretary-General on 27 August 2004.

5. After an oral briefing on 3 September, the Security Council requested ONUB and MONUC to continue the investigation to identify those responsible for the attack, and to submit a final report on the massacre. In response, the two missions formed a multidisciplinary team, supplementing the human rights officers and military observers with military officers, United Nations police, political and disarmament and demobilization officers, and continued the investigation in both the eastern Democratic Republic of the Congo and Burundi.

6. The present report reflects the findings of both the preliminary and the follow-up investigations.

## II. Summary

7. The joint investigation by MONUC and ONUB into the events of 13 August was able to establish the basic facts of the massacre, such as the time and method of attack and the number and fate of the victims. However, despite extensive research in both Burundi and the eastern Democratic Republic of the Congo, the United Nations team was at this stage unable to conclusively identify who authored, financed or carried out the killings. Nevertheless, sufficient information was collected to warrant further investigation.

8. The team was able to conclude that the available evidence points to a Burundian rebel organization, the Parti pour la libération du peuple hutu — Forces nationales de libération (PALIPEHUTU-FNL), the only group to claim responsibility, as having probably participated in the massacre, but as being unlikely to have done so on its own. Evidence of the presence of other groups, largely produced by the testimony of survivors of the attack, was credible, but could not be independently confirmed by the United Nations team in its subsequent investigations.

9. The attack targeted Banyamulenge refugees from the eastern Democratic Republic of the Congo who had fled fighting there between army factions and armed groups in the region in June. The fighting had complex political causes related to the transitional process in the Democratic Republic of the Congo.

10. The Banyamulenge have long been perceived as pro-Rwanda by many actors in the region, even though the Banyamulenge participated on both sides of the fighting in June 2004, and many fled to Gatumba fearing reprisals. The Governments of Burundi and Rwanda, as well as the Munyamulenge Vice-President of the Democratic Republic of the Congo, charged that the Gatumba refugees were killed by an alliance of anti-Tutsi groups based in the eastern Democratic Republic of the Congo which may have included, depending upon the source, elements of the Armed Forces of the Democratic Republic of the Congo, members of a Rwandan Hutu rebel group partly composed of ex-forces armées rwandaises (FAR) and Interahamwe, and the Mayi-Mayi. The United Nations team investigated each claim and followed leads justifying further follow-up, but was unable to find conclusive evidence implicating any of those actors.

11. The massacre was committed at a critical moment in the peace processes in both the Democratic Republic of the Congo and Burundi and threatened to scuttle both. In the immediate aftermath of the attack, Burundi and Rwanda threatened to invade the Democratic Republic of the Congo to pursue the groups they believed responsible. It was exploited by extremist elements in the principal political parties in both countries to harden positions on power-sharing, demobilization, military restructuring and elections. Regional and international mediators, including some from ONUB and MONUC, have attempted since the massacre to help the two Governments to put the peace processes back on track. The political situation in both countries remains fragile.

12. The conclusions of this investigation reflect the United Nations team's evaluation of the evidence it collected in the month after the massacre. Much of the most useful evidence was lost because the scene of the massacre had been badly contaminated before the team arrived, while bodies of the victims were buried without forensic analysis. Nonetheless, the team collected sufficient information

about this grave crime to recommend a thorough judicial inquiry at both the national level, led by the Government of Burundi with the full cooperation of the Democratic Republic of the Congo and Rwanda, and the international level, led by the International Criminal Court.

## III. The massacre in its regional context

13. The Gatumba massacre occurred at a critical moment in international and regional efforts to establish stability, order and democratic institutions after 6 years of war in the Democratic Republic of the Congo and 11 years of conflict in Burundi.

14. In Burundi, the Arusha Agreement of August 2000 provided for a three-year transition which began on 1 November 2001 and is scheduled to end on 31 October 2004 after the adoption of a new constitution and the holding of elections for a post-transition government. In November 2003, the Conseil national pour la défense de la démocratie — Forces pour la défense de la démocratie (CNDD-FDD), one of two rebel groups refusing to end hostilities, signed a global ceasefire agreement and joined the Transitional Government, leaving Agathon Rwasa's FNL as the last rebel group outside the peace process.

15. The FNL leader, Agathon Rwasa, has consistently refused to join political negotiations with the Transitional Government, insisting that he would only negotiate with the real holders of power, the Tutsi political and military establishment. FNL refuses to negotiate within the established framework of the Arusha Agreement and claims to be the sole interlocutor with whom a power-sharing agreement should be established.

16. FNL is a small force of approximately 1,500 fighters, operating primarily within Burundi, mainly in the Provinces of Bujumbura Rural and Bubanza (both bordering the Democratic Republic of the Congo) and the outskirts of Bujumbura. Its strategic position allows it to keep pressure on the civilian population of the capital. FNL forces remain in close proximity to the Forces armées burundaises (FAB), and prefer to ambush FAB units rather than engage in open battles. Combined FAB and CNDD-FDD forces had seriously weakened FNL in the months prior to Gatumba.

17. The massacre occurred at a time of intensive negotiations over power-sharing arrangements for the post-transitional period, the terms of a new constitution, and the timing of national elections. On a parallel track, the Burundian Armed Forces were also supposed to begin barracking their troops and integrating former rebel combatants into their ranks, and to accept the disarmament and demobilization of the majority of their soldiers.

18. The transition in the Democratic Republic of the Congo began on 30 June 2003 with the participation of all of the signatories of the Global and All-Inclusive Agreement, signed in Pretoria in December 2002, but crucial security issues, particularly the integration of all former belligerent forces into a new national army, the Forces armées de la République démocratique du Congo (FARDC), and the dismantlement of foreign armed groups, particularly the Rwandan rebels based in the eastern Democratic Republic of the Congo, remained unresolved.

19. Since 1993, the eastern Democratic Republic of the Congo has been the crucible of the conflicts in the Great Lakes region. Massive outflows of refugees

from Burundi and Rwanda in the 1990s further destabilized already fragile inter-communal relations. Congolese speakers of Rwandan languages, such as the Banyamulenge of South Kivu, often became the victims of Burundian and Rwandan armed groups. Targeted by some Kivu politicians as foreigners with no right to land, political office or positions of power, the Banyamulenge largely supported the Banyamulenge-led Rassemblement congolais pour la démocratie — Goma (RCD-Goma), whose forces regularly committed atrocities against civilian populations in the Kivus. The Banyamulenge thus became the principal enemy of the pro-Kinshasa community-based armed groups fighting RCD-Goma and the Rwandan occupation in the Kivus, known as the Mayi-Mayi.

20. Despite the signature of the Global and All-Inclusive Agreement and the beginning of the transition in the Democratic Republic of the Congo, South Kivu has remained the battleground for numerous armed groups. Community-based Mayi-Mayi allied to Kinshasa have been officially incorporated into the new FARDC chain of command structure but sometimes appear to act independently. Some of them collaborate with a Rwandan armed group, the Forces démocratiques de libération du Rwanda (FDLR), often identified as ex-FAR or Interahamwe, even though the large majority did not participate in the 1994 Rwanda genocide. In the Ruzizi plains, the Mayi-Mayi also interact with the Burundian FNL, who often cross the border to obtain supplies and escape from the Burundian army. A Banyamulenge armed group, led by Patrick Masunzu, opposing Rwanda and RCD-Goma and allied with Kinshasa, also controls a section of the Ruzizi plains and the highlands of Minembwe, and has been nominally integrated within FARDC.

21. The Bukavu crisis in the eastern Democratic Republic of the Congo in May and June 2004 was, among other factors, a result of the lack of progress in the transition and, in particular, the delays in military reform and integration. It slowly built up from February 2004. Tensions between Colonel Jules Mutebutsi, Deputy Military Regional Commander for South Kivu, and his Commanders (first Brigadier General Prosper Nabyolwa and then, since April 2004, General Mbuza Mabe, both representing the ex-Government component) started to rise after Mutebutsi, a Munyamulenge with RCD-Goma allegiance, rebelled against his commanding officers and retained control over several hundred troops.

22. The tensions in Bukavu took on a new dimension late in May and early in June when Jules Mutebutsi, allied with Laurent Nkunda, another dissident ex-RCD-Goma officer, captured Bukavu under the pretext of preventing a genocide against the Banyamulenge population. Under international pressure, Nkunda's troops finally withdrew northwards on 6 June, while Mutebutsi's troops withdrew south towards Kamanyola on 8 June. The following morning, FARDC, whose strength had been augmented through reinforcements from the western part of the Democratic Republic of the Congo, were able to re-enter Bukavu.

23. All sides, including FARDC troops as they entered Bukavu on 9 June, looted and abused civilians and, in some instances, raped women and girls. Banyamulenge civilians were one of the prime targets of the violence, prompting them to flee from Bukavu and Uvira in fear of FARDC reprisals after the withdrawal of Nkunda and Mutebutsi. Those refugees ended up in Gatumba.

# IV. The Gatumba camp

24. The Gatumba transit centre is situated at the western outskirts of Gatumba town in Bujumbura Rural Province. It lies between the Democratic Republic of the Congo border, just 3.4 km to the west, and the Burundian capital city of Bujumbura, 20 km to the south-east. The closest town in the Democratic Republic of the Congo is Uvira, 6 km to the west. An infantry battalion of FAB, as well as a Gendarmerie position, are stationed less than 1 km north-east of the transit camp.

25. The site had functioned since 1996 as a transit point for refugees from the Democratic Republic of the Congo, Burundian refugees returning from that country and, at times, Burundian internally displaced populations. It was re-activated in October 2002 as a response to influxes of Congolese refugees from the South Kivu area. Those refugees were largely relocated to Cishemeye transit camp (Cibitoke Province) and replaced by groups of Burundian returnees coming back from the Democratic Republic of the Congo. The facility comprised 31 tents, separated into two clusters. The Congolese refugees occupied a cluster of 15 green tents, and the Burundian returnees a cluster of 16 white tents. A distance of approximately 40 m separated the two clusters. The centre was not fenced, in accordance with the general policy of UNHCR of allowing refuges as much freedom of movement as possible.

26. The influx of refugees from South Kivu in the eastern Democratic Republic of the Congo to Burundi started on 9 June 2004. Refugees crossed into the Burundian Provinces of Bujumbura Rural and Cibitoke across the Ruzizi River border. They arrived in groups divided according to their ethnic and geographical areas of origin and settled in three transit locations, including Gatumba. At that time, the site was occupied by groups of Burundian returnees from the Democratic Republic of the Congo and some internally displaced families from the neighbouring communes of Bujumbura Rural Province.

27. The Banyamulenge refugees at the Gatumba transit centre were, for the most part, from Uvira. A number of sources suggested that camp residents were divided between supporters of Jules Mutebutsi, the Banyamulenge colonel close to RCD-Goma who led the June attack on Bukavu, and Patrick Masunzu, the Banyamulenge leader of a pro-Kinshasa armed group. However, the United Nations team was unable to determine the composition or political allegiances, if any, of the camp population at the time of the massacre.

28. At the time of the attack, the refugee population of the Gatumba transit centre was estimated at 411 families, comprising 1,767 individuals, of whom 820 were residents. The remaining population was scattered in Gatumba commune or Bujumbura city. The recent arrivals had close relations with the Banyamulenge communities that had long been settled in Bujumbura, and especially the former civil servants of Uvira.[1] Some 317 Burundian returnees from the Democratic Republic of the Congo and the United Republic of Tanzania were also sheltered at the transit centre.

29. On 12 June 2004, the Burundian Ministry of the Interior convened a meeting with the United Nations Humanitarian Coordinator, United Nations agencies and the

[1] A number of Banyamulenge from South Kivu, and especially from Uvira, had been residing in Bujumbura for many years, and had been commuting between Bujumbura and Uvira to work.

newly established ONUB to discuss immediate actions to be taken in the light of the refugee arrivals from the Democratic Republic of the Congo.[2] At the end of the meeting, the Government of Burundi agreed on the need to transfer refugee populations away from the border in accordance with international principles and committed itself to providing UNHCR with the names of the designated locations for the organization of the new camps. It was furthermore agreed that the Government of Burundi would reinforce civilian and Gendarmerie personnel to assist in the management and protection of the sites. The meeting closed with the commitment of the Government to designate transfer locations within three days.

30. While UNHCR pressed for relocation, the refugees themselves expressed a strong reluctance to relocate to camps at a safer distance from the border, in the expectation that they would be able to return to the Democratic Republic of the Congo once the situation stabilized. Several visitors from the Democratic Republic of the Congo reportedly also encouraged the refugees to wait for repatriation. These included the Governor of South Kivu on 27 June 2004, a member of the Senate on 26 July, the Minister of Social Affairs and his delegation on 31 August and 1 September and Vice-President Azarias Ruberwa on 12 and 13 August, who met a delegation of refugees at his hotel. The refugees remained reluctant to be relocated even after the Gatumba massacre.

31. In accordance with the agreements, the Gendarmerie increased the number of personnel deployed on the Gatumba site from 6 to 10. Nevertheless, the Government delayed the designation of alternative sites for several weeks despite repeated reminders from UNHCR of the need to expedite transfer and the insistence by humanitarian actors that the camp's proximity to the border posed serious risks to the refugees.

32. As the instability in South Kivu continued, security concerns remained a critical issue. From mid-June to the date of the massacre, United Nations and non-governmental organizations working with the Congolese population regularly received reports of armed individuals and/or groups entering Burundi from the eastern Democratic Republic of the Congo, the presence of weapons in the transit sites, visits of South Kivu local leaders from various factions, irregular cross-border movements of people trying to reach Burundi, and people "commuting" between Burundi and the Democratic Republic of the Congo.[3]

33. Reports from Burundi border authorities concerning armed individuals prevented from crossing the border confirmed that the Government was applying measures to separate civilians from armed individuals and groups. At the same time, however, the arrest of a number of armed individuals in the Karurama transit site in Cibitoke late in June, and later in Bujumbura Rural Province, were indications that gaps existed in the screening procedures at the border.

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[2] At the meeting, the Government of Burundi was represented by the Ministers of the Interior, Public Security, Defence, and Reintegration. The United Nations was represented by the Principal Deputy Special Representative of the Secretary-General at ONUB, the Humanitarian Coordinator, UNHCR, WFP and the Office for the Coordination of Humanitarian Affairs.

[3] The "commuting" movement between Uvira and Gatumba was confirmed during weekly cross-border missions of staff of the Office for the Coordination of Humanitarian Affairs in the period July-August. Interviews with refugees indicated that they were travelling to Uvira to check on the status of their houses and property. Office for the Coordination of Humanitarian Affairs/Burundi, Mission Reports, July-August 2004.

34. The presence of armed Congolese and Rwandan groups in Cibitoke and Bubanza Provinces along the border of the Democratic Republic of the Congo had been a constant feature since the beginning of the year.[4] Early in July, approximately 200 armed FDLR fighters entered Cibitoke Province, an incursion into Burundian territory that the Burundian Armed Forces were unable to control for several days.[5] In addition, despite the relatively improved situation in the northern communes of Bujumbura Rural (including the area surrounding Gatumba), FAB and the provincial administration confirmed that FNL was still active in the Rukoko forest and in the communes of Bubanza Province bordering Bujumbura Rural.

35. In turn, the Governors of Cibitoke and Bujumbura Rural expressed concern regarding the overall security environment in the communes where the refugees were staying, as refugees mixed with local people and were not staying at the sites. The low occupancy rate of some shelter units in Gatumba, confirmed by UNHCR and non-governmental organizations, was an indication of the constant movement of the refugees between the site, the surrounding local village, and Bujumbura.

36. During the weeks before the attack, tracts were distributed by the little-known Mouvement congolais des combatants non-violents pour la démocratie (Congolese Movement of Non-Violent Combatants for Democracy), calling for the Banyamulenge to be attacked. The tracts, written in French and Kiswahili, were found at Uvira and the central market in Bujumbura. One was also found in the Gatumba transit centre itself. The Banyamulenge reportedly did not take the tracts seriously, and did not inform UNHCR or the authorities when the tracts were discovered circulating.

37. Despite all these concerns, neither the Burundian civilian authorities nor the Burundian Armed Forces took timely or appropriate actions to ensure the protection of the refugees and Burundian civilians at the site. Governmental action was characterized by a perception — expressed by some Burundian civilian and military authorities — that stability in South Kivu would be restored, allowing for an early return of the refugees to the Democratic Republic of the Congo.[6]

## V. The massacre and its aftermath

38. On 13 August 2004, between 2200 and 2230 hours, the Gatumba transit centre was attacked for approximately 90 minutes, resulting in the death of 152 refugees. An additional 106 were wounded and eight remain missing.[7] Of the dead and missing, an overwhelming majority, 147, were Banyamulenge.

39. Of the 15 tents housing Congolese refugees, 11 were burned, eight completely and three partially. Bullet holes were visible in the Congolese refugee tents still

[4] Office of the United Nations Security Coordinator Security Cell, weekly reports to the United Nations Security Management Team, January-July 2004. The presence of armed groups in these provinces prompted the Security Management Team to recommend the maintenance of security phase IV in Bubanza and Cibitoke Provinces (February 2004).

[5] Meeting with the FAB Chief of Staff, Office for the Coordination of Humanitarian Affairs, Burundi, July 2004.

[6] Meetings with the FAB Chief of Staff and Governor of Bujumbura Rural, Office for the Coordination of Humanitarian Affairs, Burundi, July 2004.

[7] In the immediate aftermath of the massacre, 147 people died and 111 were injured. Five people subsequently died from their injuries.

standing. The attackers did not target any of the 16 tents in the cluster housing Burundian returnees.

40. Most of the dead were women and children. Some 51 bodies were completely burned, while the rest bore bullet wounds and burns. Of the injured, most suffered bullet wounds, while others were burned. A machete blow to the head injured an 8-year-old girl.

41. A MONUC official reached Gatumba on 14 August at 0700 hours and ONUB staff arrived at 0900 hours, several hours after the massacre was carried out, by which time the injured had been removed for medical treatment in Bujumbura. The site of the massacre was not protected or cordoned off and many surviving camp residents, aid workers, military and government officials were moving around the centre.

42. On the night of the attack, only 6 of the 10 gendarmes assigned to monitor activities within the transit centre and provide security for the inhabitants were reportedly on duty. When the attack began, the six gendarmes were said to have fled. They did not carry any means of communication.

43. Neither the 100 FAB soldiers nor the 30 gendarmes allegedly on duty near the centre apparently attempted to leave their premises and defend the camp once the killing began, despite the fact that the FAB unit had apparently alerted its General Staff headquarters at the outset of the shooting. FAB and the Gendarmerie arrived on the scene a few hours after the attack had ended.

44. The bodies of those killed were buried on 16 August 2004 in a mass grave near the camp without prior forensic examination. Many were interred without having been identified.

## A. Reactions in the Democratic Republic of the Congo

45. A communiqué issued by the Presidency of the Democratic Republic of the Congo on 14 August 2004 strongly condemned the massacre, characterizing it as "a despicable act perpetrated against the Congolese civilian population". President Joseph Kabila asked for the immediate establishment of an international commission of inquiry to identify those responsible and ensure that the perpetrators were punished.

46. A separate statement published by RCD-Goma on 14 August denounced what it termed a "genocide of Congolese refugees" committed at Gatumba. RCD-Goma alleged that two FARDC companies led by one Major Ekofo, the deputy to Colonel Nyakabaka, commander of the Ruzizi plains area of operations, had crossed into Burundi on the night of 13 August and joined forces with FNL to perpetrate the massacre. It further stated that the attack was planned by the FARDC Commander of the Tenth Military Region, General Budja Mabe, in order to stop Banyamulenge refugees from returning to the Democratic Republic of the Congo, particularly to Bukavu and Uvira. The RCD-Goma statement concluded by demanding the opening of an international inquiry leading to the prosecution before the International Criminal Court of those responsible, the forceful disarmament of all allied "genocidal forces", including the Mayi-Mayi, and the rapid conclusion of military

integration in the Democratic Republic of the Congo to improve security at the border.[8]

47. On 16 August, as soon as the RCD-Goma delegation had arrived in Goma, Laurent Nkunda published a communiqué, stating that he "would not make the same mistake twice", referring to his agreement to withdraw from Bukavu under international pressure. He explained that his withdrawal had led to "the Gatumba genocide", that the massacre "confirms there is an extermination plan against the Banyamulenge" and that he would continue his fight to remove the Transitional Government in Kinshasa.[9]

## B. Reactions in Burundi

48. On the day after the massacre, the spokesperson for FNL stated to the press that his organization had carried out the attack. The spokesperson initially suggested that FNL had only attacked the Gendarmerie and FAB positions near the camp. Subsequently, in a press communiqué dated 15 August, the FNL Secretary for Foreign Relations stated that FNL had attacked the "military camp" at Gatumba, alleging that the refugee camp was the base of the "Banyamulenge military command". The statement suggested that FNL had initially attacked the FAB and Gendarmerie posts, and that elements of FAB had fled to the refugee camp where armed Banyamulenge came to their defence. Other press statements made by FNL sources subsequently insisted that the camp was attacked either because of the presence of armed individuals, or because the Banyamulenge provided support to FAB. Finally, some three weeks after the attack, an FNL source suggested that FNL had not been involved in the attack at all but had publicly assumed responsibility in exchange for arms supplied to FNL by the Congolese group behind the killings.

49. The President of Burundi, Domitien Ndayizeye, visiting the Gatumba camp on 14 August, strongly condemned the attack and blamed FNL for "trying to justify their crime on military grounds". He stated that Burundi had been attacked by an armed group coming from the Democratic Republic of the Congo. He added that preliminary elements of the investigation and testimonies from survivors indicated that the attackers spoke Congolese native languages, Kirundi, and other languages of the region. The President of Burundi committed his Government to doing everything possible to bring the perpetrators to justice.[10]

50. The FAB spokesman also added at a press conference on 14 August that the massacre "was a genocide against the Tutsi in the Great Lakes region because the information we have is that FNL, combined with Mayi-Mayi militia, have attacked the camp".[11]

## C. Reaction of the Government of Rwanda

51. In a communiqué issued on 14 August, Rwanda accused FDLR of participating in the attack together with FNL and Congolese armed groups, and asked the

[8] RCD communiqué, 14 August 2004.
[9] Press communiqué, Minova, 16 August 2004.
[10] AFP, 14 August 2004.
[11] Reuters, 14 August 2004.

Government of the Democratic Republic of the Congo and the international community to forcibly disarm them. The Minister for Foreign Affairs of Rwanda, Charles Murigande, added that "if they failed to act, Rwanda would respond itself, including, if necessary, by fighting the Hutu rebels inside Congo".[12]

## D. Political repercussions in the Democratic Republic of the Congo

52. The Gatumba massacre, which was perpetrated only two months after the Bukavu crisis, sent shock waves through the Democratic Republic of the Congo and put the transitional process at serious risk. The massacre happened several hours after Azarias Ruberwa, the Munyamulenge Vice-President representing the RCD-Goma component of the Transitional Government, had met with refugee representatives of the Gatumba transit centre in Bujumbura. The Vice-President was on an official visit to Burundi with the aim of encouraging the Banyamulenge refugees to return to the Democratic Republic of the Congo.

53. Mr. Ruberwa expressed outrage over the attack, which was carried out hours after his own meeting with Gatumba refugees. In an emotional speech delivered during the burial of the victims, he detailed the reasons why he believed the massacre was an act of genocide. While calling for an international investigation, he restated his claim that the perpetrators were Burundian, Rwandan and Congolese. He also promised the survivors that they would return to the Democratic Republic of the Congo, by force if necessary. Mr. Ruberwa also negatively evaluated the state of the transition in the Democratic Republic of the Congo, asserting that it had broken down, that reconciliation had failed and security had not been restored, and that a pause was necessary to identify the necessary remedies. He then left for Goma, the RCD-Goma stronghold and capital of North Kivu, where he unilaterally declared a week of national mourning.

54. After a week of mounting tension, Mr. Ruberwa announced from Goma on 23 August that RCD-Goma had suspended its participation in the transitional institutions. The suspension was not supported by all RCD-Goma ministers and members of parliament, and remained temporary. Under strong national and international pressure, RCD-Goma ministers and members of parliament returned to Kinshasa by 29 August and agreed to resume participation in the institutions of the transition, on the condition that an evaluation of the performance of the Transitional Government would be carried out.

55. The political cleavage created by the massacre, not only within the Transitional Government and Parliament but also in public opinion, has made the fostering of an inclusive transitional process in the Democratic Republic of the Congo more difficult. The *Rwandophone* faction of RCD-Goma, questioning the transition's legitimacy on the basis of its failure to prevent the massacre, found itself isolated from the rest of the party and the country. As a result, Vice-President Ruberwa may now have greater difficulty defending the RCD-Goma agenda in the institutions of transition. This development could undermine the chances for a genuine implementation of the Global and All-Inclusive Agreement. Extremist *Rwandophone* forces who argue that the peace agreements have been violated, and

[12] BBC News, 15 August 2004.

that a return to armed conflict is their only option, have been able to raise their voices, thus posing an additional threat to the transition.

56. Efforts to achieve true reconciliation, which would help to set the climate for free and fair general elections, have also been jeopardized by Gatumba. The massacre is the latest in a series of killings apparently targeting the Banyamulenge community. As with previous massacres in the area (including of non-Tutsi Congolese civilians) they have received no apparent attention from the Congolese judiciary. Similarly, no FARDC officials or Nkunda and Mutebutsi combatants have been charged for the killing of Banyamulenge and non-Tutsi Congolese civilians during the Bukavu crisis.

## E. Political repercussions in Burundi

57. The Gatumba massacre has had repercussions for the transitional process in Burundi, as well as for Burundi's relations with its neighbours, in particular the Democratic Republic of the Congo. Regional Governments meeting in Dar es Salaam in August condemned the attack, declared FNL a terrorist organization, and requested the African Union and the Security Council to support this view. ONUB suspended transition-related discussions with the FNL leadership. In the wake of the massacre, the Burundian Armed Forces appear to have taken a more aggressive military posture against FNL units in the field. While the motives for the FNL declaration of responsibility for the massacre remain unclear, the practical result of the claim has been the increased isolation of the group in Burundi and the region.

58. Since the massacre, Tutsi hardliner groups who have not accepted the power-sharing formula agreed upon in Pretoria in June have utilized the attack to insist on strengthening the role of Tutsi-dominated parties in post-transition government institutions. These demands have blocked the conclusion of a power-sharing agreement among all Burundi groups that would pave the way for the adoption of a post-transition constitution and elections for a post-transition government.

59. Similarly, senior leaders in FAB have indicated a resistance to moving forward on the integration of former rebel combatants into the army and the barracking of its troops as a prelude to the launching of the disarmament, demobilization and reintegration process called for in the Arusha Agreement. The final step in the transition process, the organization and implementation of elections for a post-transition government, depends upon a secure electoral environment, which in turn depends upon the cantonment of rebel combatants and barracking of FAB troops.

60. In addition, the FAB Chief of Staff, General Germain Niyoyankana, has declared that FAB did not exclude the possibility of an offensive in the Democratic Republic of the Congo, together with Rwanda, to protect its borders from the attacks of an "alliance of negative forces" composed of FNL, FDLR and a section of the Congolese army.[13]

[13] AFP, 17 August 2004.

# VI. ONUB-MONUC investigation and findings

61. From the outset, the ONUB-MONUC investigation team faced a number of difficulties beyond its control that limited its ability to collect and analyse information crucial to identifying those responsible. Both missions were informed about the massacre only several hours after it had ended: MONUC in the early morning and ONUB at 0700 hours on 14 August. The missions were unable to take any action during the night. The investigating team was not able to determine exactly what occurred at the site from the time when the massacre ended until United Nations officials arrived on the scene, beyond the fact that in the hours following the attack FAB personnel, assisted by gendarmes, transported the injured to hospitals in the capital.

62. Second, by the time MONUC and ONUB officials arrived, any remaining evidence at the site had been contaminated. The Burundian authorities had not cordoned off the area to protect evidence and large numbers of survivors, relatives of those killed, government authorities and others were walking through the remains of the camp. No physical evidence that could lead to the identification of assailants was found at the site. The investigating team was not able to discover any casualties suffered by the assailants or the Burundian army or Gendarmerie.

63. Third, the corpses of the victims were buried without any forensic investigation.

64. Fourth, the testimony of survivors varied widely, and was sometimes contradictory. Statements made by some witnesses contained inconsistencies, and changed during different interviews. While this could be the result of the trauma suffered, it may also be attributable to a fear of reprisals or the influence of political and ethnic loyalties, given the possible wide-ranging political implications of the massacre. Declarations by political and community leaders may also have influenced the subsequent statements of witnesses and survivors.

65. Finally, the Burundian authorities have not, to date, provided the investigation team with information that would clarify the reason for the apparent lack of response of the military and civilian authorities — for example, the military was unable to offer any substantial physical evidence to indicate that its Gatumba post was attacked — or provide evidence to support the claims of Burundian Government officials that Congolese groups were behind the killings.

## A. Reconstruction of the attack

66. Witness reports gathered at the site of the massacre suggest that the attack commenced at 2200 hours or shortly thereafter on 13 August and lasted for 60 to 90 minutes.

67. Survivors of the massacre reported that the first indication of an impending attack was the approaching sound of drums and religious chants. Several people reported hearing the sound of a whistle and a shouted order before the attack was launched.

68. The attackers were said to be "numerous" and reportedly included armed men, women and children. Some were said to be wearing complete or partial military uniforms while others were in civilian dress. Estimates given by observers regarding

the number of perpetrators vary significantly. A suspect arrested by FAB who alleges that he participated in the attack provided a figure between 90 and 120. However, the reliability of this individual's testimony has been questioned, given that he provided the investigation team with varying accounts of the attack in different interviews. FAB estimated the total number of assailants at 600. Some witnesses claimed that there were 200. The military component of the investigation team concluded that the real figure is impossible to establish from witness accounts, but estimated from the execution and the duration of the operation that there were probably between 100 and 300 assailants.

69. All of those interviewed, including refugees who escaped and the Burundian returnees in the tents across from those attacked, stated that the assailants spoke several different languages, including Kirundi, Kinyarwanda, Lingala, Kiswahili and Kifulero. The latter three languages are spoken in the Democratic Republic of the Congo, from which the survivors and witnesses deduced that the perpetrators were of Congolese origin.[14] The first two languages, spoken in Burundi, Rwanda and the eastern Democratic Republic of the Congo, are closely related, and differences may be difficult to establish under the circumstances of an armed attack at night-time.

70. Witnesses reported that slogans commonly used by FNL were shouted during the attack, in Kirundi, the principal language of Burundi. They included the slogans "we are soldiers of God", "we will exterminate all the Tutsis in Central Africa", "kill these dogs, these Tutsis", "today, you Tutsis, whether you are Rwandese, Congolese or Burundese, you will be killed".

71. The attackers also reportedly chanted or shouted other slogans such as "down with the Banyamulenge" and "we must finish off the Banyamulenge, we don't want them to come back to the Congo".

72. On the basis of survivor testimony, lines of fire and expended cartridge patterns, the investigating team estimated that the assailants first formed a firing line some 70 to 80 m north-west of the cluster of green tents housing the Banyamulenge refugees, from which they fired initial rounds on the Congolese refugees' shelters. It appears that they then approached the tents, shooting indiscriminately into each structure from the entrance and then moving inside to kill and burn remaining survivors. Numerous bullet shells were found at the entrance of each tent, along the central entrance aisle inside the tents, and on the surrounding footpaths.

73. Investigators found numerous bodies of victims lying in and around the tents. Some had bullet wounds, and others were burned beyond recognition. The bodies were gathered together and counted by the humanitarian workers present at the site.

74. Eight tents had been completely destroyed by fire; three had been partially destroyed. Inflammable material, including cooking oil, had been distributed to the refugees a few days earlier, and possibly contributed to the extent of the damage. Bullet holes were visible in the sides of tents that were not totally destroyed. The five tents that were not burned also showed the marks of bullets. The sides of some tents had been torn, apparently by refugees trying to escape.

[14] The border between the Democratic Republic of the Congo and Burundi is porous and local ethnic languages are commonly spoken by those of different ethnicities. In the past, combatants assaulting Congolese civilians have sometimes spoken in Kinyarwanda in order to mislead the victims into thinking they were Rwandan Interahamwe.

75. The side of the camp housing Burundian returnees was not touched in the attack. Banyamulenge who were housed with the Burundians escaped unharmed. The Burundian returnees interviewed believed that the attackers deliberately targeted the Banyamulenge refugees. They stated that the attackers told the returnees to stay calm, remain inside their tents, and promised not to harm them. They also reported that the attackers shouted that they should fire on the green tents — the tents housing the Banyamulenge.

76. Following the attack, the assailants withdrew, apparently leaving no trace. Some witnesses stated that one group of attackers left the camp in the direction of the Democratic Republic of the Congo (to the west), towards Ruzizi (Kiliba), taking six refugees with them. Another group of attackers was said to have headed in the direction of Lake Tanganyika (just to the south). The testimony of the individual who claimed to have taken part in the massacre and was subsequently arrested contradicts this view. He stated that the attackers did not take anyone with them, but killed three people outside the transit camp, on their way out.

77. No evidence of the assailants' entry or retreat was found during a sweep of a 2-km radius around Gatumba camp, conducted on 22 August by ONUB military. Nevertheless, the sweep was not definitive as the border region is very porous, largely unguarded, and its natural characteristics permit individuals to easily pass unnoticed by authorities on either side. The investigation team visited Kiliba, the entry point on the Democratic Republic of the Congo side where RCD-Goma claimed the perpetrators had crossed. Military authorities at both the Congolese and Burundian border posts at Kiliba denied having seen or heard any movement on the night of the massacre. The FARDC Uvira District Commander told the team that his investigation into alleged border crossings of some assailants before or after the massacre at the Kiliba and Gatumba checkpoints turned up no evidence of crossings that night.

78. There were no reported casualties or injuries among the attackers. Efforts by team members to canvass hospitals in the eastern Democratic Republic of the Congo to determine whether any individuals with combat-related injuries had been admitted after the massacre were rebuffed by hospital officials, although informal enquiries at the same hospitals failed to identify any patients potentially linked to the massacre.

## B. Response of the Burundi military, Gendarmerie and administrative officials

79. Neither the 100 FAB soldiers nor the 30 gendarmes stationed less than 1 km north-east of Gatumba transit centre came to the defence of the camp, despite the fact that the FAB company reportedly alerted their General Staff headquarters at the beginning of the attack. FAB and Gendarmerie personnel arrived at the scene several hours after the attack had finished.

80. The administrative authorities were also reportedly informed of the attack by their Gatumba representative while the massacre was under way. No instructions for a response were apparently given, and civilian authorities visited the site of the massacre for the first time in the early hours of the morning of 14 August and helped international humanitarian agencies to transfer the wounded to Bujumbura.

81. No reinforcements arrived from Bujumbura or other positions to come to the aid of the refugees, or to provide assistance to FAB or the Gendarmerie of Gatumba.

82. According to versions provided by military authorities, one group of attackers surrounded the military camp and another the Gendarmerie camp to prevent any efforts to rescue the refugees. The attackers, allegedly armed with rifles, grenades and even rocket launchers, were said to have been posted at the various entrances to the camps and to have prevented the soldiers and gendarmes from intervening.

83. Four days after the massacre, FAB personnel showed ONUB bullet shells that were allegedly found approximately 230 m in front of the FAB barracks in Gatumba, in support of their allegation that the FAB and Gendarmerie barracks had come under simultaneous fire during the attack on the transit centre. The shells left by the attackers close to the Gendarmerie barracks were, according to the Burundian authorities, taken away by children in the neighbourhood.

84. The investigation team was not able to confirm these representations, however. The view of the FAB barracks from the alleged location from which the assailants were firing is obstructed by a thick row of trees and bushes. The military members of the investigation team estimated that, had the assailants wanted to carry out a serious "fixing" operation, it would not have been from that location. The team was accordingly of the view that the alleged attacks on the FAB company and Gendarmerie barracks were implausible from a military standpoint. It also doubted that such an attack could have impeded FAB from reacting. There is no evidence that any of the 100 FAB soldiers or 30 gendarmes at the barracks actually shot back at the attackers. The investigation team was not allowed to enter the two barrack compounds to verify any physical damage from the alleged attack.

85. As concerns the camp security, only 6 of the 10 gendarmes who normally guarded the camp were apparently present on the night of 13 August. When interviewed, they claimed to have fired the first shots in the direction of the attackers and to have fired all the bullets in their possession before running off to hide on the other side of the road. They did not carry means of communication. The team was not able to verify their version of events.

## C. Allegations of involvement in the attack

### Allegations of FNL participation

86. The investigation team concluded that the available evidence tends to support the claim that FNL was a participant in the attack. The organization quickly claimed responsibility; aspects of the method of attack as reported by witnesses, particularly the chanting of religious songs, are consistent with FNL practices; and the killings occurred in an area where FNL is active.

87. However, if FNL did indeed participate in the attack, the available evidence would tend to indicate that it did not organize and carry out the attack on its own. The FNL description of the events leading up to the massacre and its role in the operation was confused and changed in important respects over the weeks following the killings. The available information about the attack, particularly credible accounts of the different languages spoken, suggests the participation of other groups.

88. In addition, motives of FNL for attacking the Banyamulenge, a group not targeted by the rebel organization in the past, remain obscure. One theory suggests that the group's public declarations of responsibility could have reflected a strategy to undermine a peace process that threatened to remove the organization and its leaders as political actors while demonstrating a remaining capacity to carry out military operations. The United Nations team was unable to verify this hypothesis.

**Allegations of FARDC involvement**

89. Right after the attack, on 14 August, RCD-Goma issued a statement in Kinshasa, signed by its Secretary-General and its First Vice-President. It claimed that two FARDC companies, led by a Major Ekofo, joined forces with FNL to carry out the massacre to stop pro-RCD-Goma refugees from returning to the Democratic Republic of the Congo. The Uvira Military District Commander, interviewed by the United Nations team about Ekofo's alleged involvement, denied that he could have participated. The evening before the interview, Major Ekofo had been severely injured by a gunshot to his lower abdomen by an AK-47 round. The District Commander claimed that the rifle of one of his guards had accidentally discharged. The United Nations team has investigated to the extent possible, but has not received permission to question Ekofo, who is allegedly still recovering from his injury in a hospital in Bukavu.

**Allegations of Mayi-Mayi involvement**

90. The investigation team received allegations that various political and military groups based in or allied with authorities in the Democratic Republic of the Congo or Rwanda were behind the massacre. Some suggested the involvement of Mayi-Mayi fighters, such as the Bafulero group of Colonels Nyakabaka and Kayamba, who have fought against RCD-Goma in the past, and hold strong anti-Rwandan sentiments. They tend to perceive the RCD-Goma Banyamulenge as a "fifth column" pursuing Rwandan interests in the Democratic Republic of the Congo, and refuse to accept them as Congolese nationals.

91. Since Patrick Masunzu's uprising against RCD-Goma and Rwanda in February 2002, the Ruzizi Mayi-Mayi groups have established a modus vivendi with the former Rwandan Patriotic Army officer and Munyamulenge political leader. They fought together to retake Uvira from RCD-Goma in October 2002, after the Rwandan Defence Force's withdrawal from the Democratic Republic of the Congo, and more recently in Kamanyola against Mutebutsi's troops. Since they have no professional military training, it is not likely that any of these Mayi-Mayi groups had the operational capacity to organize, lead and ultimately carry out a well-organized joint military operation with FNL, at night, leaving no evidence of its entry and exit. The Mayi-Mayi military record in the Ruzizi plains has never been that of a well-organized, focused, competent or disciplined military force. The possibility of involvement in the massacre of individual, specially selected Mayi-Mayi elements cannot however be discarded.

92. On 14 August 2004, the Burundian Armed Forces handed a letter to MONUC they claimed to have intercepted and which, they claimed, proved a link between FNL and the Mayi-Mayi. FAB also distributed copies to ONUB and to the international press. The letter, ostensibly sent to FNL by a Mayi-Mayi group called Forces armées populaires, details the number of troops allegedly recruited by the

Mayi-Mayi group in Burundi and the Democratic Republic of the Congo and mentions a dispatch of ammunition sent by that group to FNL. Upon analysis, MONUC reached the conclusion that the letter was a forgery, and in all probability was created to incriminate the Mayi-Mayi.[15] The letter also mentions a Mouvement congolais des combatants non-violents pour la démocratie, which on 29 July 2004 produced a tract inciting ethnic hatred. The authenticity of the tract has also been questioned.

**Allegations of FDLR involvement**

93. FDLR is the largest Rwandan Hutu armed group in the Democratic Republic of the Congo. It is composed of units from the ex-ALIR I (Armée pour la libération du Rwanda), Rwandan combatants based in the Kivus, some of which are ex-FAR and/or Interahamwe, and ALIR II, the Rwandan combatants who fought alongside the Congolese Armed Forces during the second Congo war, which started in August 1998. FDLR was formed in 2001, and represents the armed wing of a group whose political leadership lives in exile in Europe.

94. FDLR opposes the regime of President Paul Kagame in Rwanda and demands the organization of an "inter-Rwandan dialogue" with the aim of negotiating a power-sharing agreement with the ruling Rwandan Patriotic Front. FDLR organizes military operations to destabilize Rwanda from its bases in the Democratic Republic of the Congo in order to force such a negotiation. Although their manifesto professes adherence to reconciliation and development, FDLR officers' discourse is heavily tainted by an anti-Tutsi interpretation of politics in Rwanda and propagates revisionist explanations of the 1994 genocide.

95. FDLR has remained focused on its objective of regaining power in Rwanda and has not attacked Banyamulenge civilians in the recent past. The FDLR of South Kivu has coexisted and sometimes allied itself with the Banyamulenge forces of Masunzu against the Rwandan army. Its alleged motive for participating in the attack on the Gatumba camp would have been to provoke a Rwandan intervention in the Democratic Republic of the Congo, thus forcing the Government of the Democratic Republic of the Congo to use it as an ally in a new war. However, other sources suggested that it would have been unlikely for FDLR to attack a camp where some of Masunzu's sympathizers and their families had sought refuge.

96. Nevertheless, not all ex-FAR elements answer to the FDLR chain of command. A splinter group led by Faustin Nguba, a Rwandan Hutu formerly of FAR and described by many in the local population as a warlord and a criminal, has engaged in theft, rape, murder, and financially motivated kidnappings. His 70-member group is suspected of killing bus passengers on the road between Kamanyola and Uvira with FNL in January 2004. The team uncovered no concrete evidence linking Nguba to the Gatumba massacre.

97. A group of Burundian FNL, led by Eugene Bitaryumunyu, had a base in the Sange area, close to FDLR and Nguba positions. FNL allegedly used this location as

[15] The letter was written by a Colonel Dunia Aochi, who is not a Mayi-Mayi. He is in fact a civilian Bembe from Rusenga, Fizi territory. The serial numbers of the soldiers quoted in the letter do not follow the Congolese format. The Forces armées populaires do not exist; this may have been a confusion with the former Forces d'auto-défense populaires of FARDC General Dunia. The letter mentioned the "zone de Fizi"; any Congolese would be aware of the fact that Fizi is in fact a territory.

a training camp in the past. Bitaryumunyu was arrested by the Burundian authorities in June 2004, however, and no information was found to link his group to the massacre.

### D. Allegations of the militarization of the transit centre

98. In the weeks preceding the massacre, humanitarian agencies and non-governmental organizations reported rumours that pro-Mutebutsi elements in the Gatumba transit centre were arming. Prayer sessions held at night outside the centre were prohibited by the Burundian authorities, following reports that these were meetings of combatants. The alleged militarization of the transit centre was a justification advanced by FNL when it later claimed authorship of the massacre. Reports from various sources indicate that, two days before the attack, the transit centre was visited by a Rwandan military officer and a high-ranking Banyamulenge RCD-Goma officer. The aim of the visit reportedly was to recruit combatants to join Nkunda's ranks. The team was also informed separately that between 20 and 37 pro-Mutebutsi men left the camp several days prior to the massacre. UNHCR was aware of the reports and found no evidence of weapons in the camp. Similarly, the investigation team found no evidence at the post-massacre site of the presence of weapons caches and was unable to independently verify the reports of military recruiting.

## VII. Conclusions

99. The Security Council requested ONUB and MONUC to investigate the Gatumba massacre with the objective of identifying the actors responsible for organizing and implementing the killing. After nearly one month of work, the investigation team has been unable to establish who organized, carried out and paid for the atrocity. It concluded that the available evidence points to FNL as probably having participated in the attack, but it was not able to form a clear view of the nature and extent of its probable role. Testimonies of the attack, particularly with regard to languages spoken, past alliances among armed groups in the region, and uncertainty about the capability of FNL to carry out the operation on its own, leave open the possibility of significant involvement of other groups or individuals active in the region.

100. The team uncovered very few facts beyond those reflected in the preliminary report to the Security Council: the number of victims, the way they died, the claims of responsibility by FNL and the wide range of accusations and theories presented by political actors in the region after the event. The most important evidence — the massacre site itself — was contaminated before investigators arrived some seven hours after the killings ended. While there was general agreement on some important aspects of the attack from the testimony of survivors — the methodology used by the assailants, the chants and songs, the languages spoken — those elements do not provide conclusive evidence about the attackers. Testimony from some key witnesses was contradictory and thus not always reliable.

101. The attack was clearly directed against the Banyamulenge, and was therefore, apparently, ethnically and politically motivated. As indicated in various parts of this report, many of the armed groups operating in the eastern Democratic Republic of

the Congo and Burundi border region harbour resentments against that group and others may have political motives for preventing their return to the Democratic Republic of the Congo. In addition, the team noted that armed groups operating in both the eastern Democratic Republic of the Congo and Burundi involved in past killings of civilians have a history of ad hoc collaboration with each other based on financial interests and arms trafficking with little concern for political or ideological principle. An attack organized as a mercenary operation cannot be ruled out. Nonetheless, at the time of writing neither the factual evidence from the attack nor analyses of political motives or operational capability provided sufficient support for concluding that one or more of these groups probably participated.

102. While the facts uncovered did not permit the United Nations team to conclusively determine the identity of the assailants beyond the likely participation of FNL, credible, though not verified, information suggesting the potential involvement of one or more actors in the Democratic Republic of the Congo warrants a continuation of the investigation.

103. Whatever the intentions of the actors who masterminded, organized and perpetrated the killings, the massacre certainly served the interests of those who might wish to derail the fragile peace processes under way in the region. It has been yet another serious setback for the transition process in the Democratic Republic of the Congo, and continues to be a heavy burden for its further progress. It has sent a shock wave through the Burundian transition process at a moment critical to its success.

104. As noted earlier in this report, although military and government officials spoke with investigators in the field, the Government of Burundi has not provided to the United Nations either an official clarification of the facts surrounding the FAB and Gendarmerie responses on the night of the massacre or evidence supporting its assertions that armed groups from the Democratic Republic of the Congo participated. The Attorney General of Burundi has been unable to meet with ONUB to discuss the status of his investigation. Contacts with the Government of Rwanda did not produce any concrete evidence to support the claim that elements from the Democratic Republic of the Congo were involved in the massacre.

105. Finally, the investigation team emphasizes that the Burundian authorities failed to move the refugee camp to a safer location prior to the attack and failed to adequately protect the refugees and come to their aid on the evening of the massacre.

## VIII. Recommendations

106. The Gatumba massacre was a crime carried out against civilians of a particular ethnic group in a region marked by a pattern of war crimes, crimes against humanity and genocide over the past half-century. In order to break the cycle of impunity which has also marked these crimes, and the violent ethnic politics to which this impunity has given rise, the Security Council should encourage the immediate initiation of national and international judicial proceedings to ensure that the authors and perpetrators of the killings are identified, prosecuted and brought to justice.

107. The Security Council should strongly encourage the Government of Burundi to carry out a full police and judicial investigation leading to the identification and

prosecution of those responsible. The Government of Burundi should be encouraged to seek international technical assistance for the investigation and should be able to rely upon the full cooperation of the Government of the Democratic Republic of the Congo and the Government of Rwanda.

108. At the international level, the appropriate body to continue this investigation and to prosecute those responsible is the International Criminal Court, and the Government of Burundi should be encouraged to immediately invoke the Court's jurisdiction. The ONUB-MONUC investigating team has collected information which, although insufficient for drawing conclusions at this stage, could be useful for an investigation by the Court.

109. In order to accord respect to the victims, and in view of the high degree of political instability still persisting in the region, Governments and opinion leaders in the region should be called upon to exercise restraint in their declarations concerning the Gatumba massacre.

110. Finally, the Government of Burundi should be requested to immediately take all measures necessary to protect refugee and internally displaced populations on its territory, including moving refugee camps away from the border area and providing security adequate to deter attacks against the sites.

## Annex I

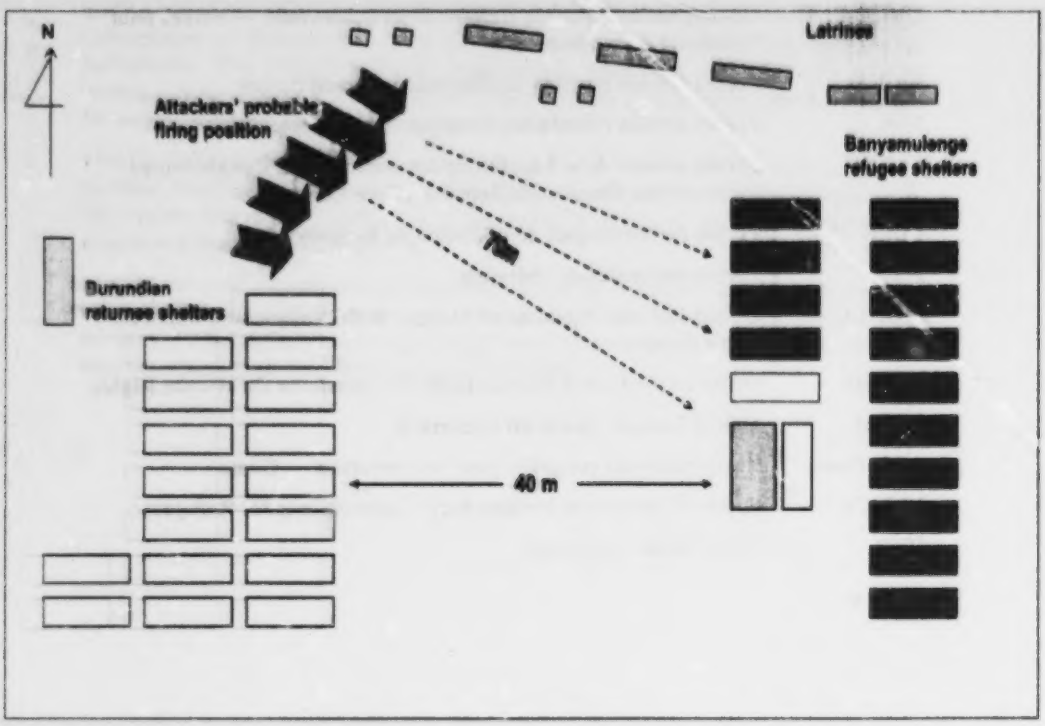
### Abbreviations

| | |
|---|---|
| ALIR | Armée pour la libération du Rwanda |
| CNDD-FDD | Conseil national pour la Défense de la Démocratie — Forces pour la défense de la démocratie |
| FAB | Forces armées burundaises/Burundian Armed Forces |
| FAR | Forces armées rwandaises/Rwandan Armed Forces |
| FARDC | Forces armées de la République démocratique du Congo/Armed Forces of the Democratic Republic of the Congo |
| FDLR | Forces démocratiques de libération du Rwanda |
| FNL | Forces nationales de libération |
| MONUC | United Nations Organization Mission in the Democratic Republic of the Congo |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| ONUB | United Nations Operation in Burundi |
| RCD-Goma | Rassemblement congolais pour la démocratie — Goma |
| UNHCR | Office of the United Nations High Commissioner for Refugees |
| WFP | World Food Programme |

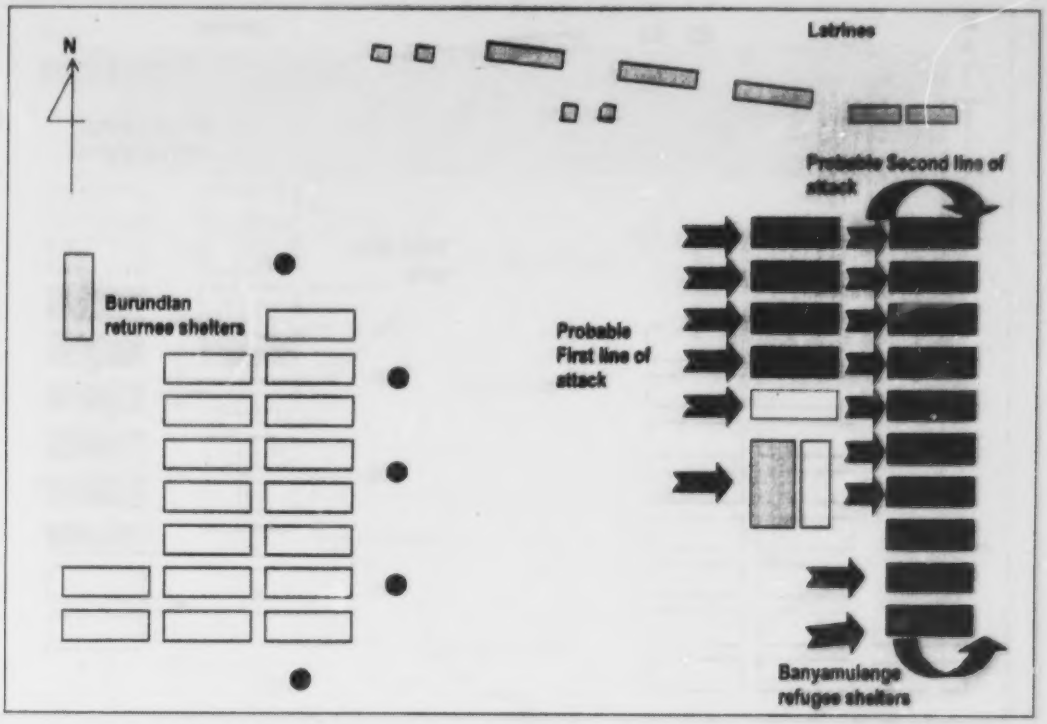
## Annex II

### Plan of the Gatumba transit centre at the time of attack

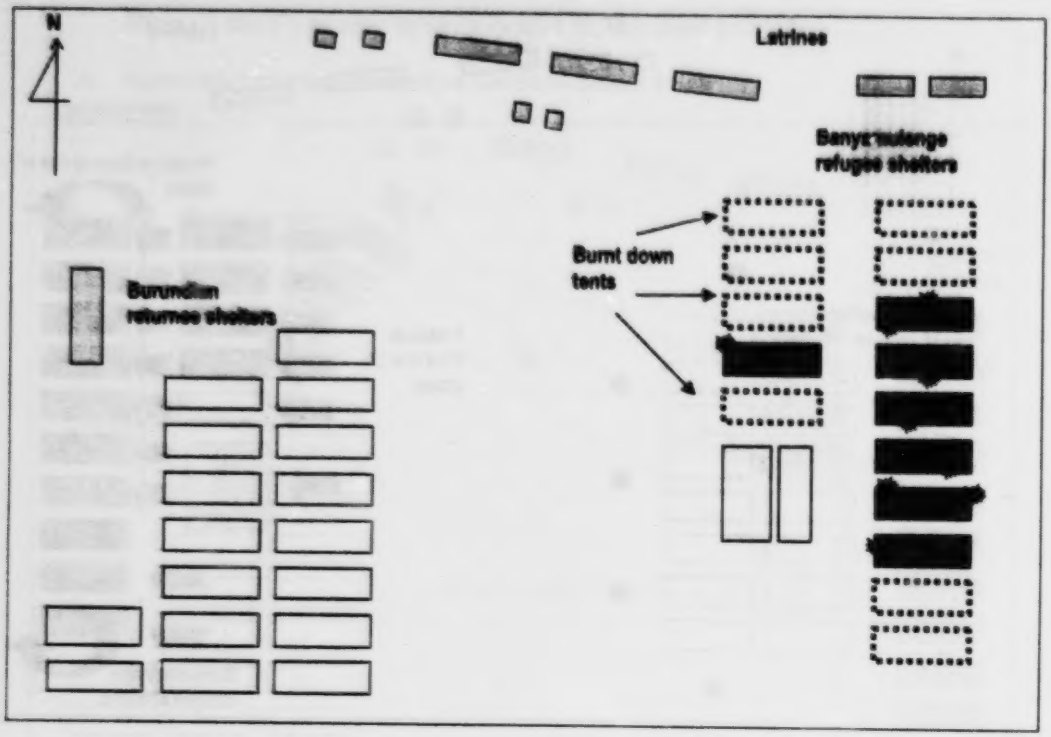
**A. Estimated first stage of attack on Gatumba transit centre**



**B. Estimated second stage of attack on Gatumba transit centre**

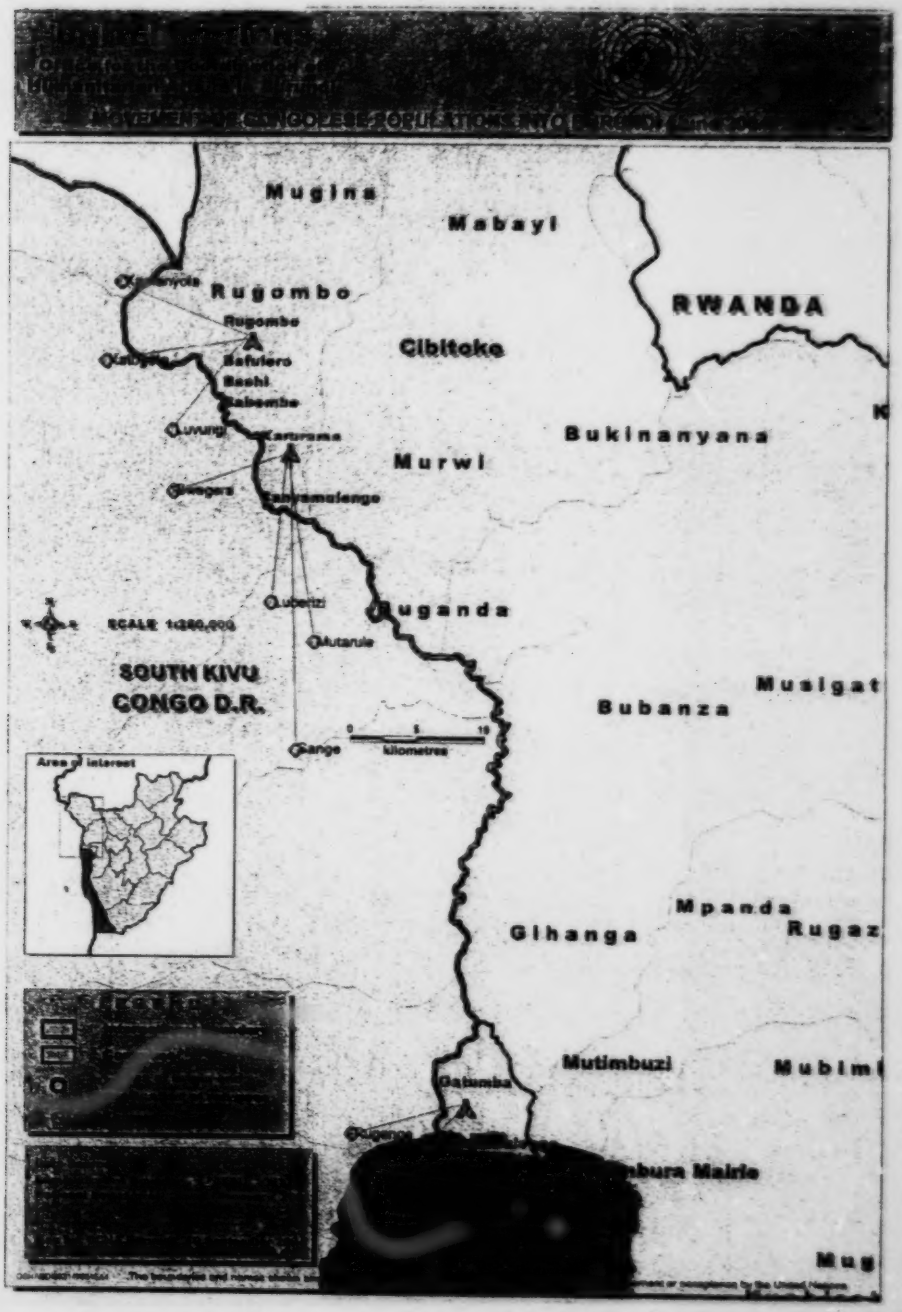


C. **Gatumba transit centre after the attack**



Annex III

Map of the Gatumba area



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# Report of the Secretary-General on the situation in Abkhazia, Georgia

## I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1554 (2004) of 29 July 2004, by which the Council decided to extend the mandate of the United Nations Observer Mission in Georgia (UNOMIG) until 31 January 2005. It provides an update of the situation in Abkhazia, Georgia, since my report of 14 July 2004 (S/2004/570).

2. My Special Representative for Georgia, Heidi Tagliavini, continued to head UNOMIG. She was assisted in this task by the Chief Military Observer, Major General Hussein Ghobashi (Egypt). The strength of UNOMIG on 1 October 2004 stood at 117 military observers and 11 civilian police officers (see annex).

## II. Political process

3. During the reporting period, the Mission, led by my Special Representative, continued its efforts to promote stability on the ground and facilitate the dialogue between the Georgian and Abkhaz sides on economic cooperation, the return of refugees and internally displaced persons, and political and security matters — the three sets of issues identified as priority areas at the United Nations-chaired high-level meetings of the Group of Friends at Geneva (see S/2004/315, paras. 5-7). The Group of Friends continued to support these efforts, which were complemented by the so-called Sochi working groups, which implement agreements between the President of the Russian Federation and the President of Georgia reached in Sochi in March 2003 (see S/2003/412, para. 5). These concerted activities are aimed at facilitating meaningful negotiations between the Georgian and Abkhaz sides on the basis of the paper entitled "Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi" and its transmittal letter (see S/2002/88, para. 3).

4. My Special Representative maintained regular, frequent contacts with the two sides at the highest level, with the Group of Friends' representatives in their respective capitals and in Tbilisi, and with representatives of the Organization for Security and Cooperation in Europe (OSCE) in an effort to maintain momentum in the peace process.

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5. On 21 September, I met in New York with President Mikheil Saakashvili to discuss the situation in Georgia. I noted the challenges that Georgia and the region had faced during the preceding months and stressed my commitment to work with the parties to the Georgian-Abkhaz conflict. Mr. Saakashvili underlined the importance of the continuing involvement of the United Nations and suggested elements for a solution of Georgia's internal conflicts, such as confidence-building measures, demilitarization of the conflict zone and the widest possible autonomy for Abkhazia with international guarantees. He reiterated these elements in his address to the General Assembly at its fifty-ninth session. On 16 August, President Saakashvili wrote to me to express his deep concern over the situation in South Ossetia, reiterating that the Government of Georgia firmly rejects the use of force as a means for conflict resolution.

6. Following the acceptance by both sides of the recommendations of the feasibility study led by the United Nations Development Programme (UNDP) for the Gali, Ochamchira and Tqvarcheli districts (see S/2004/570, para. 8, and S/2004/26, para. 10), UNDP, in close collaboration with UNOMIG, is initiating its rehabilitation programme, which will focus on agriculture, health, water and sanitation, capacity-building for non-governmental organizations and coordination of rehabilitation efforts. UNOMIG and UNDP are finalizing an agreement with the European Union, which is ready to contribute to the UNDP rehabilitation efforts and to the UNOMIG trust fund for quick-impact projects for rehabilitation in the zone of conflict.

7. On 20 July, the Russian Federation convened a meeting of the Sochi working group on the return of refugees and internally displaced persons. My Special Representative, representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), and the Commander of the collective peacekeeping forces of the Commonwealth of Independent States (CIS) participated in the meeting. The Georgian and Abkhaz sides again discussed the draft letter of intent, prepared jointly by UNOMIG and UNHCR and endorsed by the Group of Friends at Geneva in February 2004 (see S/2004/315, para. 5). However, they remained unable to agree on the text and again undertook to work on agreeable formulations before the next meeting planned for November. The sides also discussed the UNHCR draft concept paper on registration of the returnees in the Gali district and agreed to exchange more substantial comments prior to the next formal meeting. Both sides again confirmed their support for the direct involvement of UNOMIG and UNHCR in the return process.

8. On 30 July, a Georgian coast guard vessel fired on a foreign cargo ship in the coastal waters near Sukhumi, in what Georgia regarded as a law enforcement action to assert control over its internationally recognized territorial waters in the Black Sea, including international shipping to and from seaports in Abkhazia, Georgia. On the following day, the Abkhaz authorities announced the suspension of their participation in the negotiation process and called for an investigation into and a legal assessment of the incident by the United Nations, the CIS peacekeeping force and the broader international community as a precondition for their return to the negotiating table. The Abkhaz side also suspended its participation in the ceasefire monitoring and security-related mechanisms, including the weekly quadripartite meetings and the joint fact-finding group.

9. My Special Representative initiated meetings with both sides and issued a statement, urging the sides to seek resolution of such incidents exclusively through negotiations and reiterated her offer to assist them by convening a meeting on maritime issues, made at the meeting on security guarantees held on 20 May at Sukhumi (see S/2004/570, para. 5). She also urged them to refrain from any unilateral action that could negatively affect the peace process or further complicate the situation. In these efforts, she had the active support of the Group of Friends, which held high-level meetings with the sides in Tbilisi and Sukhumi, urging both sides to adhere to the ceasefire agreement, resume unconditionally the negotiations and address maritime issues at the planned meeting on security guarantees. While the Georgian side responded positively, the Abkhaz side continued to maintain its position. Under these circumstances, the meeting on security guarantees planned for 15 September (ibid.) had to be postponed. In a parallel effort, the Russian Federation offered to convene a meeting on maritime issues on 25 September at Sochi, with the participation of the sides and UNOMIG. That meeting also had to be postponed at the request of the Abkhaz side.

10. During the reporting period, tensions also emerged in the relations between Georgia and the Russian Federation. Georgia officially protested against commercial tourist visits to Abkhazia, Georgia, and the resumption on 10 September, after a 12-year interruption, of the Sukhumi-Sochi-Moscow passenger rail line as violations of Georgia's sovereignty, international law and existing bilateral agreements. It appealed to the international community to help put an end to such acts, particularly in the context of the unilateral withdrawal of the Abkhaz side from the negotiation process. The Georgian side also protested against continued visits to Abkhazia, Georgia, by high-profile Russian politicians. President Putin and President Saakashvili met during the CIS Heads of State Summit in Astana, Kazakhstan, on 16 September to discuss the present state of bilateral relations, including conflict resolution issues. These developments occurred against the background of heightened tension in the wider region after the hostage-taking in Beslan, in the North Ossetian Republic of the Russian Federation, from 1 to 3 September.

11. At Sukhumi, political leaders were preoccupied with the preparations for the de facto presidential elections, which were held on 3 October. At the time of the writing of this report, the final outcome remained inconclusive. In resolution 1255 (1999) the Security Council considered unacceptable and illegitimate the holding of self-styled elections in Abkhazia, Georgia, which took place in the absence of the majority of the population and the determination of the political status of the territory. UNOMIG has maintained this position. The Georgian side warned against legitimization of these elections and regretted outside support for one of the candidates.

## III. Operational activities

12. UNOMIG has continued to carry out its mandated activities in the Gali and Zugdidi sectors. Regular patrolling has been conducted in both the security and restricted weapons zones on both sides of the ceasefire line. UNOMIG reported and protested about four violations of the Moscow ceasefire agreement — two by each side. In the Gali sector, UNOMIG observed a T-55 tank in the restricted weapons zone during the annual Abkhaz military exercises on 26 July in the Ochamchira training area. On 29 July, a UNOMIG patrol was denied access to the same area by

the Abkhaz military personnel. In the Zugdidi sector, on 18 August, three 122-mm artillery pieces were observed in the restricted weapons zone in the Kulevi training area and, on 7 September, the CIS peacekeeping force reported an armoured personnel carrier in the security zone, which the Georgian side confirmed.

13. UNOMIG and the CIS peacekeeping force continued limited patrolling in the Abkhaz-controlled lower Kodori Valley. Patrolling in the Georgian-controlled upper Kodori Valley remained suspended for security reasons and because poor road conditions made this part of the valley inaccessible. Discussions continued with the parties and the CIS peacekeeping force on the modalities of resuming patrolling in the upper Kodori Valley, including on security guarantees. Helicopter patrols also remained suspended, while administrative flights continued on authorized flight routes over the Black Sea.

14. No weekly quadripartite meetings could be convened after the suspension by the Abkhaz side of its participation in the peace process on 31 July. The Abkhaz side also suspended its involvement in the joint fact-finding group. Nevertheless, UNOMIG continued to investigate incidents in cooperation with the Georgian side and the CIS peacekeeping force. During the reporting period, seven cases have been completed and await agreement of the parties before being closed; five cases are currently under investigation.

**Kodori Valley**

15. UNOMIG patrols visited the lower Kodori Valley on 5 August and 2 September, jointly with the CIS peacekeeping force and the Abkhaz side. They observed no signs of unusual activity and reported the situation to be calm. UNOMIG engineers participated in two of the patrols to assess road conditions following heavy rainfalls in August, and to conduct repairs. The patrols confirmed significant damage to the road leading to the so-called broken bridge which marks the divide between the lower and upper parts of the valley and which had been repaired earlier by UNOMIG. In the upper Kodori Valley, the Georgian side reported several over-flights by unauthorized aircraft during the reporting period.

**Gali sector**

16. The overall military situation has been generally calm in the Gali sector. In addition to conducting their annual military exercises from 26 to 30 July, the Abkhaz authorities reinforced their security presence, especially along the ceasefire line, in the lead-up to the de facto presidential elections on 3 October.

17. At the same time, the number of criminal incidents, particularly in the lower Gali district, has increased compared with the same period in 2003. Overall, five killings, 12 shootings, four abductions and 30 robberies have been reported. The most serious incident involved a shooting between the Abkhaz militia and two unidentified perpetrators in Rechki on 22 July, during which the perpetrators were killed. There were also reports of shootings in the Saberio area and the abduction of a family in Sida 2. The increase in robberies is largely attributed to the beginning of the hazelnut harvest season in August. The decision of the de facto authorities to expel several families in Chuburkindzi whose sons had joined the Georgian army also generated tensions. These families moved to Zugdidi and have not yet returned to their homes because of fear of being victimized by the Abkhaz militia.

**Zugdidi sector**

18. The overall situation in the Zugdidi sector was generally calm, and the number of criminal incidents reported was relatively low. On 2 September, an exchange of fire between the Georgian police and an armed group was reported near the ceasefire line in Shamgona; no casualties or injuries were sustained by either side. On 15 September, a UNOMIG civilian police officer was robbed at gunpoint at his house in Zugdidi; the local police are investigating.

## IV. Police

19. The civilian police component of UNOMIG remained operational only on the Zugdidi side of the ceasefire line, where it continued to receive good cooperation from the local police. It provided police-specific input into the regular quadripartite meetings, until their suspension, and to the investigations of the joint fact-finding group, including forensic assistance. Meanwhile, the refusal by the Abkhaz side to accept the deployment of UNOMIG civilian police in the Gali sector continued to hamper cross-ceasefire line cooperation, to hinder progress in criminal investigations, and to limit the effectiveness of preventive anti-crime efforts.

20. After the donors meeting hosted by UNOMIG on 19 April (see S/2004/570, para. 23), the European Union and the Government of Italy pledged financial contributions in support of UNOMIG efforts to improve the capacity of local law enforcement. A donation of police protective clothing and associated materiel is expected from the Government of Switzerland in November.

21. Following advice that the OSCE Kosovo Police Service School would be unable to host a training course for members of the law enforcement agencies from the Gali and Zugdidi sectors (see S/2004/570, para. 24), my Special Representative is discussing other options and proposals for training abroad. UNOMIG is also continuing preparations for an introductory training programme on the ground and developing a special training programme for members of Georgia's newly created "patrol police".

22. The UNOMIG civilian police also began planning for the reconstruction, funded by the European Union, of a police station in Zugdidi which was destroyed by a criminal group earlier this year. The new building will be a model station, in the context of the wider programme of police reform throughout Georgia. The project will help to complement the planned training courses for the local police with modern facilities and equipment and contribute to promoting the change in the practices and environment of local law enforcement agencies in the zone of conflict. The UNOMIG civilian police have an advisory role in the project. It is envisaged that the facility will also be utilized for regional training of local law enforcement officers and in promoting democratic international policing standards.

23. Other developments include the start of recruitment in some villages of the Gali district in an attempt to increase the representation of ethnic Georgians in local law enforcement agencies. It should be recalled that one of the recommendations of the UNOMIG security assessment mission of 2002 was to considerably increase the ratio of locally recruited staff, including in the higher command echelons (see S/2003/412, para. 16).

## V. Cooperation with the collective peacekeeping forces of the Commonwealth of Independent States

24. UNOMIG and the CIS peacekeeping force maintained close cooperation at all levels in performing their respective mandates, including during joint patrols to the Kodori Valley and in areas of the Gali sector. They also maintained close communication and coordination following the Abkhaz suspension of participation in the quadripartite meetings and the joint fact-finding group.

## VI. Human rights and the humanitarian situation

25. The human rights situation during the reporting period was influenced by the preparation for the de facto presidential elections; the Abkhaz authorities have deferred all action on major human rights issues until after the "elections". In addition, they were still unable to create an environment of increased respect for human rights conducive to the safe and dignified return of internally displaced persons.

26. The United Nations Human Rights Office in Abkhazia, Georgia, continued to provide free legal advice to the local population and monitor court trials and places of pre-trial detention. In partnership with various regional and international organizations, the Office facilitated and implemented a number of projects aimed at strengthening the non-governmental sector and building local capacity to protect and promote human rights. These included activities under the programme "Assisting communities together", funded by the Office of the United Nations High Commissioner for Human Rights. The Office also continued the implementation of the human rights training programme for the Sukhumi militia school.

27. The human rights situation in the Gali district remained precarious, notwithstanding the increased number of law enforcement personnel on the ground. The culture of impunity prevailed, generating a feeling of insecurity among the local population. Cases of prolonged detention, extortion and use of physical violence by uniformed personnel were reported. On the positive side, the Human Rights Office was able to monitor the trial of three local juveniles who had crossed the ceasefire line without the authorization of the Abkhaz de facto security services, which resulted in their subsequent release.

28. International agencies and non-governmental organizations continued efforts to help vulnerable groups by providing food, medical aid and infrastructure assistance. UNHCR continued to rehabilitate some schools in the Gali district. The United Nations Children's Fund (UNICEF) expanded its regular country programming into Abkhazia, Georgia, by providing immunization supplies, preventative health care, and school kits which were mostly distributed by UNHCR and UNOMIG. The United Nations Development Fund for Women (UNIFEM) continued to promote people-to-people dialogue, women in leadership, and youth and education activities focusing on conflict prevention and resolution as well as gender and peace-building. The United Nations Volunteers programme (UNV) continued to focus on developing the capacity of local non-governmental organizations, peace education and the promotion of small-scale income-generation projects. Since July, UNV has funded four new projects targeted at non-governmental organization capacity-building and peace education. The Swiss

Agency for Development and Cooperation (SDC) funded a new community development project, which benefited 500 families and fostered exchanges among families on both sides of the ceasefire line. It funds a project, implemented by Première Urgence, an international non-governmental organization, to improve the quality of 438 individual and 22 collective houses in Abkhazia, small business development in the Gali district, and a trade and economic development project in eastern Abkhazia, Georgia.

29. The International Committee of the Red Cross (ICRC) continued to visit detention places and collect and distribute Red Cross messages between members of separated families. ICRC supported local authorities, in particular the military, in training in international humanitarian law. It continued to supply five Abkhaz hospitals with emergency surgical material and medicines and to support blood banks in Sukhumi, Agudzera, Tqvarcheli and Gagra and an orthopaedic workshop. The European Commission Humanitarian Aid Office (ECHO) continued to support ICRC, and to provide food to local residents and internally displaced persons. It also funded an income-generating programme, "Agriculture, trade and craft", which will benefit approximately 53,700 people. Médecins sans Frontières-France continued its drug distributions and medical consultations. It supports the Sukhumi City Hospital and a tuberculosis treatment programme. The Spanish non-governmental organization Accion contra el Hambre continued to run the World Food Programme's "food-for-work" project, which benefits 13,550 families, and plans a new project, to be funded by ECHO and SDC, to improve the food security of 1,610 vulnerable families on both sides of the ceasefire line. The HALO Trust continued demining in the Sukhumi, Ochamchira and Gali districts. HALO found and destroyed 97 anti-personnel mines, 7 anti-tank mines and 250 items of unexploded ordnance during the reporting period. In July, it received permission from the Abkhaz authorities to operate in the upper Gali district.

30. UNOMIG continued to complement this assistance by implementing its own quick-impact projects. Since its inception in November 2002, 66 projects have been approved, of which 43 have now been completed. The projects continue to receive wide public acceptance, particularly on the Zugdidi side, and the support of the local authorities. During the reporting period, the trust fund for the quick-impact projects received a contribution from the Government of Switzerland of US $28,000 and a pledge from the Government of the United Kingdom of Great Britain and Northern Ireland.

## VII. Observations

31. The Georgian-Abkhaz peace process has come perilously close to a standstill. While my Special Representative is still in close and frequent contact with both sides, the parties themselves have not met at the political level since July, and even the regular working level contacts through the weekly quadripartite meetings and joint fact-finding group are suspended. It is to be hoped that, that after the October "elections", the Abkhaz side will muster the political will to return to the established forums of the United Nations-led peace process without preconditions, and to seek solutions at the negotiating table. At the same time, I urge the Georgian side to maintain its commitment to pursuing the settlement of the conflict in Abkhazia and other internal disputes exclusively by peaceful means. My Special Representative will continue her efforts in that direction with the support of the

Group of Friends. I remain deeply convinced that further progress in the peace process is possible only through participation of both sides in genuine negotiations, which should ultimately address the core issue of the conflict, namely the political status of Abkhazia within the State of Georgia.

32. During the period under review, UNOMIG continued efforts to alleviate the suffering of the local population and internally displaced persons through facilitating economic rehabilitation in the zone of conflict and attracting international donors, including the European Union. Such efforts, however, can be sustained only if the parties themselves contribute to the creation of stability and prosperity on both sides of the ceasefire line by engaging in meaningful negotiations.

33. The security of United Nations personnel must be upheld. I urge both sides effectively to ensure the safety of UNOMIG at all times and to identify and bring to justice the perpetrators of criminal acts, including those responsible for the ambush of a UNOMIG bus in Sukhumi in September 1998, the shooting-down of a UNOMIG helicopter in the Kodori Valley in October 2001 and those involved in the hostage-taking incidents. Effective cooperation on security-related matters will also facilitate the resumption of regular patrolling in the Kodori Valley, which remains an essential part of the UNOMIG mandate.

34. In conclusion, I would like to pay tribute to the dedicated efforts of my Special Representative, Heidi Tagliavini, and to her outgoing Deputy Roza Otunbayeva for their untiring efforts, professionalism and leadership during this challenging period, to the Chief Military Observer Major General Hussein Ghobashi, and all the men and women of UNOMIG for carrying out their duties with courage and perseverance, under demanding and often dangerous circumstances.

## Annex

### Countries providing military observers and civilian police personnel (as at 1 October 2004)

| *Country* | *Military observers* |
|---|---|
| Albania | 3 |
| Austria | 2 |
| Bangladesh | 7 |
| Czech Republic | 5 |
| Denmark | 4 |
| Egypt | 5* |
| France | 3 |
| Germany | 12 |
| Greece | 5 |
| Hungary | 7 |
| Indonesia | 4 |
| Jordan | 8 |
| Pakistan | 8 |
| Poland | 6 |
| Republic of Korea | 7 |
| Russian Federation | 3 |
| Sweden | 2 |
| Switzerland | 4 |
| Turkey | 5 |
| Ukraine | 5 |
| United Kingdom of Great Britain and Northern Ireland | 7 |
| United States of America | 2 |
| Uruguay | 3 |
| **Total** | **117** |

* Including the Chief Military Observer.

| *Country* | *Civilian police personnel* |
|---|---|
| Germany | 4 |
| Hungary | 2 |
| Poland | 1 |
| Switzerland | 3 |
| Russian Federation | 1 |
| **Total** | **11** |

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Cartographic Section